



BILLING CODE 4510-26-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Regulations Containing Procedures for Handling of Retaliation Complaints;

Revision of Approved Information Collection (Paperwork) Requirements for Office of Management and Budget (OMB) Approval

[Docket No. OSHA-2012-0026]

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend and revise the collection of information currently approved by the Office of Management and Budget (OMB) for handling of retaliation complaints filed with OSHA under various whistleblower protection statutes and the procedural regulations described in this notice. These regulations contain procedures employees must use to file a complaint with OSHA alleging that their employer violated a whistleblower protection provision contained in certain statutes that generally prohibit retaliatory action by employers against employees who engage in activities protected by the statutes. This collection of information includes revisions to the electronic form for employees to submit retaliation complaints to OSHA.

DATES: Comments must be submitted (postmarked, sent, or received) by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES:

Electronically: You may submit comments and attachments electronically at

http://www.regulations.gov, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693-1648.

Mail, hand delivery, express mail, messenger or courier service: When using this method, you must submit your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA-2012-0026, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-3653, 200 Constitution Avenue, NW, Washington, DC 20210. Due to security procedures, there may be delays in receiving materials that are sent by regular mail. For more information about security procedures concerning the delivery of materials by express delivery, hand delivery, and messenger or courier service, please contact the OSHA Docket Office. The hours of operation for the OSHA Docket Office are 10:00 a.m. to 3:00 p.m., ET.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA-2012-0026) for the Information Collection Request (ICR). All comments, including any personal information you provide, such as social security numbers and dates of birth, are placed in the public docket without change and may be made available online at *http://www.regulations.gov*. For further information on submitting comments see the “Public Participation” heading in the section of this notice titled **“SUPPLEMENTARY INFORMATION.”**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the above address. All

documents in the docket (including this *Federal Register* notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download from the website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact the Directorate of Whistleblower Protection Programs at the below phone number to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Anthony Rosa, Acting Director, Directorate of Whistleblower Protection Programs, OSHA, U.S. Department of Labor; telephone: (202) 693-2199.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of a continuing effort to reduce paperwork and respondent (e.g., an employee filing a retaliation complaint) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing collection of information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate.

The agency is responsible for investigating alleged violations of whistleblower provisions contained in a number of statutes. These whistleblower provisions generally prohibit retaliation by employers against employees who report alleged violations of

certain laws or regulations. Accordingly, these provisions prohibit an employer from discharging or taking any other retaliatory action against an employee because the employee engages in any of the protected activities specified by the whistleblower provisions of the statutes. These statutes are covered under the following regulations: 29 CFR part 24, Procedures for the Handling of Retaliation Complaints under the Employee Protection Provisions of Six Environmental Statutes and Section 211 of the Energy Reorganization Act of 1974, As Amended (29 CFR part 24 covers the: Safe Drinking Water Act, 42 U.S.C. 300j-9(i); Federal Water Pollution Control Act, 33 U.S.C. 1367; Toxic Substances Control Act, 15 U.S.C. 2622; Solid Waste Disposal Act, 42 U.S.C. 6971; Clean Air Act, 42 U.S.C. 7622; Energy Reorganization Act of 1974, 42 U.S.C. 5851; and Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9610); 29 CFR part 1977, Discrimination Against Employees Exercising Rights under the Williams-Steiger Occupational Safety and Health Act (29 CFR part 1977 covers the: Occupational Safety and Health Act, 29 U.S.C. 660; Asbestos Hazard Emergency Response Act, 15 U.S.C. 2651; and International Safe Container Act, 46 U.S.C. 80507); 29 CFR part 1978, Procedures for the Handling of Retaliation Complaints under the Employee Protection Provision of the Surface Transportation Assistance Act of 1982; 29 CFR part 1979, Procedures for Handling Discrimination Complaints Under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century; 29 CFR part 1980, Procedures for Handling of Discrimination Complaints Under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002 (Title VIII of the Sarbanes-Oxley Act of 2002); 29 CFR part 1981, Procedures for the Handling of Discrimination

Complaints under Section 6 of the Pipeline Safety and Improvement Act of 2002; 29 CFR part 1982, Procedures for the Handling of Retaliation Complaints Under the National Transit Systems Security Act and the Federal Railroad Safety Act; 29 CFR part 1983, Procedures for the Handling of Retaliation Complaints Under Section 219 of the Consumer Product Safety Improvement Act of 2008; 29 CFR part 1984, Procedures for Handling of Retaliation Complaints Under Section 1558 of the Affordable Care Act; 29 CFR part 1985, Procedures for Handling Retaliation Complaints Under the Employee Protection Provision of the Consumer Financial Protection Act of 2010; 29 CFR part 1986, Procedures for the Handling of Retaliation Complaints Under the Employee Protection Provision of the Seaman’s Protection Act (SPA), as Amended; and 29 CFR part 1987, Procedures for Handling Retaliation Complaints Under Section 402 of the FDA Food Safety Modernization Act, and 29 CFR part 1988 Procedures for Handling Retaliation Complaints Under Section 31307 of the Moving Ahead for Progress in the 21st Century.

In addition, OSHA investigates complaints of retaliation filed under the recently-enacted whistleblower provision Section 7623 of the Taxpayer First Act. Collection of information contained in future regulations promulgated by the agency with respect to a whistleblower provision of any other Federal law, except those that are assigned to another DOL agency, will be added to this information collection.

OSHA’s whistleblower regulations specify the procedures that an employee must use to file a complaint alleging that their employer violated a whistleblower provision for which the agency has investigative responsibility. Any employee who believes that such

a violation occurred may file a complaint, or have the complaint filed on their behalf. Two of these regulations, 29 CFR parts 1979 and 1981, state that complaints must be filed in writing and should include a full statement of the acts and omissions, with pertinent dates, that the employee believes constitute the violation. The other regulations, 29 CFR parts 24, 1977, 1978, 1980, 1982, 1983, 1984, 1986, 1986, 1987, and 1988 require no particular form of filing for complaints. However, it is OSHA's policy to accept complaints in any form (i.e. orally or in writing) under all statutes. This policy helps ensure that employees of all circumstances and education levels will have equal access to the complaint filing process.

The agency currently utilizes the OSHA Online Whistleblower Complaint Form, which includes interactive features to aid employees seeking to understand the process and requirements for filing a retaliation complaint with OSHA. The web-based form enables employees to submit whistleblower complaints directly to OSHA 24-hours a day. The electronic form also provides information about employee protections enforced by other agencies, in order to better direct complainants to the proper investigative agencies.

OSHA proposes to revise this ICR to include revisions to the electronic complaint form to make the following changes and technical updates. On the landing page, before the electronic complaint form, the user will have the opportunity to click a hyperlink which will direct them to a map that identifies the OSHA regions and their respective contact information. Once in the electronic form, "pop-ups" will appear whenever the user attempts to click away from a required field without making an entry. Lastly, the character count for two optional text boxes will increase from 500 to 1,000 characters.

This allows the users to explain their case to OSHA. A mark-up of the proposed changes to the form is available in the docket.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed collection of information is necessary for the proper performance of the agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the collection of information, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on individuals who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB approve the proposed extension and revision of the collection of information contained in OSHA's statutory authorities and the regulations containing procedures for handling retaliation complaints at 29 CFR parts 24, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, and 1988¹. Specifically, this revision contains a revised information collection instrument, a form, which employees may use to file complaints. In addition, OSHA is requesting an adjustment increase in burden hours from 7,566 burden hours to 10,126 burden hours (a total increase of 2,560

¹ Several of these regulations use the term "discrimination" or "discrimination complaints" titles. These terms are synonymous with "retaliation" and "retaliation complaints," respectively.

hours). The updated data shows an increase in the annual number of complaints filed.

The agency will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB.

Type of Review: Revision of a currently approved collection.

Title: Regulations Containing Procedures for Handling Retaliation Complaints.

OMB Number: 1218-0236.

Affected Public: Individuals.

Number of Respondents: 10,126

Frequency of Response: Once per complaint.

Average Time per Response: 1 hour.

Estimated Total Burden Hours: 10,126

Estimated Cost (Operation and Maintenance): \$0.

IV. Public Participation — Submission of Comments on this Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (Docket No. OSHA-2012-0026). You may supplement electronic submissions by

uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled “**ADDRESSES**”). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office at (202) 693-2350, (TTY (877) 889-5627). Comments and submissions are posted without change at <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the <http://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download through this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the <http://www.regulations.gov> website to submit comments and access the docket is available at the website’s “User Tips” link. Contact the OSHA Docket Office for information about materials not available through the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational

Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1-2012 (77 FR 3912).

Signed at Washington, DC, on November 22, 2019.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

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